

House File 764 - Enrolled

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HOUSE FILE 764

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1 3 AN ACT
1 4 RELATING TO THE UNEMPLOYMENT RATE OF CONTRIBUTION OF A
1 5 PERSON WHO ACQUIRES AN ORGANIZATION, TRADE, OR BUSINESS
1 6 AND PROVIDING PENALTIES.
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1 8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 10 Section 1. Section 96.7, subsection 2, paragraph b, Code
1 11 2005, is amended to read as follows:
1 12 b. (1) If an ~~enterprise organization, trade, or business,~~
1 13 or a clearly segregable and identifiable part of an ~~enterprise~~
1 14 ~~organization, trade, or business,~~ for which contributions have
1 15 been paid is sold or transferred to a subsequent employing
1 16 unit, or if one or more employing units have been reorganized
1 17 or merged into a single employing unit, and the successor
1 18 employer, having qualified as an employer as defined in
1 19 section 96.19, subsection 16, paragraph "b", continues to
1 20 operate the ~~enterprise organization, trade, or business,~~ the
1 21 successor employer shall assume the position of the
1 22 predecessor employer or employers with respect to the
1 23 predecessors' payrolls, contributions, accounts, and
1 24 contribution rates to the same extent as if no change had
1 25 taken place in the ownership or control of the ~~enterprise~~
1 26 ~~organization, trade, or business.~~ However, the successor
1 27 employer shall not assume the position of the predecessor
1 28 employer or employers with respect to the predecessor
1 29 employer's or employers' payrolls, contributions, accounts,
1 30 and contribution rates which are attributable to that part of
1 31 the ~~enterprise organization, trade, or business~~ transferred,
1 32 unless the successor employer applies to the department within
1 33 ninety days from the date of the partial transfer, and the
1 34 succession is approved by the predecessor employer or
1 35 employers and the department.
2 1 (2) Notwithstanding any other provision of this chapter,
2 2 if an employer sells or transfers its organization, trade, or
2 3 business, or a portion thereof, to another employer, and at
2 4 the time of the sale or transfer, there is substantially
2 5 common ownership, management, or control of the two employers,
2 6 then the unemployment experience attributable to the sold or
2 7 transferred organization, trade, or business shall be
2 8 transferred to the successor employer. The transfer of part
2 9 or all of an employer's workforce to another employer shall be
2 10 considered a sale or transfer of the organization, trade, or
2 11 business where the predecessor employer no longer operates the
2 12 organization, trade, or business with respect to the
2 13 transferred workforce and such organization, trade, or
2 14 business is operated by the successor employer.
2 15 (3) Notwithstanding any other provision of this chapter,
2 16 if a person is not an employer at the time such person
2 17 acquires an organization, trade, or business of an employer,
2 18 or a portion thereof, the unemployment experience of the
2 19 acquired organization, trade, or business shall not be
2 20 transferred to such person if the department finds such person
2 21 acquired the organization, trade, or business solely or
2 22 primarily for the purpose of obtaining a lower rate of
2 23 contribution. Instead, such person shall be assigned the
2 24 applicable new employer rate under paragraph "c".
2 25 In determining whether an organization, trade, or business
2 26 or portion thereof was acquired solely or primarily for the
2 27 purpose of obtaining a lower rate of contribution, the
2 28 department shall use objective factors which may include the
2 29 cost of acquiring the organization, trade, or business;
2 30 whether the person continued the acquired organization, trade,
2 31 or business; how long such organization, trade, or business
2 32 was continued; and whether a substantial number of new
2 33 employees was hired for performance of duties unrelated to the
2 34 organization, trade, or business operated prior to the
2 35 acquisition. The department shall establish methods and
3 1 procedures to identify the transfer or acquisition of an
3 2 organization, trade, or business under this subparagraph and
3 3 subparagraph (2).
3 4 (4) The predecessor employer, prior to entering into a
3 5 contract with a successor employer relating to the sale or

3 6 transfer of the enterprise organization, trade, or business,
3 7 or a clearly segregable and identifiable part of the
3 8 enterprise organization, trade, or business, shall disclose to
3 9 the successor employer the predecessor employer's record of
3 10 charges of benefits payments and any layoffs or incidences
3 11 since the last record that would affect the experience record.
3 12 A predecessor employer who fails to disclose or willfully
3 13 discloses incorrect information to a successor employer
3 14 regarding the predecessor employer's record of charges of
3 15 benefits payments is liable to the successor employer for any
3 16 actual damages and attorney fees incurred by the successor
3 17 employer as a result of the predecessor employer's failure to
3 18 disclose or disclosure of incorrect information. The
3 19 department shall include notice of the requirement of
3 20 disclosure in the department's quarterly notification given to
3 21 each employer pursuant to paragraph "a", subparagraph (6).

3 22 (5) The contribution rate to be assigned to the successor
3 23 employer for the period beginning not earlier than the date of
3 24 the succession and ending not later than the beginning of the
3 25 next following rate year, shall be the contribution rate of
3 26 the predecessor employer with respect to the period
3 27 immediately preceding the date of the succession, provided the
3 28 successor employer was not, prior to the succession, a subject
3 29 employer, and only one predecessor employer, or only
3 30 predecessor employers with identical rates, are involved. If
3 31 the predecessor employers' rates are not identical and the
3 32 successor employer is not a subject employer prior to the
3 33 succession, the department shall assign the successor employer
3 34 a rate for the remainder of the rate year by combining the
3 35 experience of the predecessor employers. If the successor
4 1 employer is a subject employer prior to the succession, the
4 2 successor employer may elect to retain the employer's own rate
4 3 for the remainder of the rate year, or the successor employer
4 4 may apply to the department to have the employer's rate
4 5 redetermined by combining the employer's experience with the
4 6 experience of the predecessor employer or employers. However,
4 7 if the successor employer is a subject employer prior to the
4 8 succession and has had a partial transfer of the experience of
4 9 the predecessor employer or employers approved, then the
4 10 department shall recompute the successor employer's rate for
4 11 the remainder of the rate year.

4 12 Sec. 2. Section 96.16, Code 2005, is amended by adding the
4 13 following new subsection:

4 14 NEW SUBSECTION. 5. EXPERIENCE AND TAX RATE AVOIDANCE. If
4 15 a person knowingly violates or attempts to violate section
4 16 96.7, subsection 2, paragraph "b", subparagraph (2) or (3),
4 17 with respect to a transfer of unemployment experience, or if a
4 18 person knowingly advises another person in a way that results
4 19 in a violation of such subparagraph, the person shall be
4 20 subject to the penalties established in this subsection. If
4 21 the person is an employer, the employer shall be assigned a
4 22 penalty rate of contribution of two percent of taxable wages
4 23 in addition to the regular contribution rate assigned for the
4 24 year during which such violation or attempted violation
4 25 occurred and for the two rate years immediately following. If
4 26 the person is not an employer, the person shall be subject to
4 27 a civil penalty of not more than five thousand dollars for
4 28 each violation which shall be deposited in the unemployment
4 29 trust fund, and shall be used for payment of unemployment
4 30 benefits. In addition to any other penalty imposed in this
4 31 subsection, violations described in this subsection shall also
4 32 constitute an aggravated misdemeanor.

4 33 For purposes of this subsection, "knowingly" means having
4 34 actual knowledge of or acting with deliberate ignorance of or
4 35 reckless disregard for the requirement or prohibition
5 1 involved. For purposes of this subsection, "violates or
5 2 attempts to violate" includes, but is not limited to, the
5 3 intent to evade, misrepresentation, and willful nondisclosure.

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CHRISTOPHER C. RANTS
Speaker of the House

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JOHN P. KIBBIE
President of the Senate

5 15 I hereby certify that this bill originated in the House and
5 16 is known as House File 764, Eighty-first General Assembly.

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Approved _____, 2005

MARGARET THOMSON
Chief Clerk of the House

THOMAS J. VILSACK
Governor